Supreme Court, U.S.
FILED

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No. _____

In The
SUPREME COURT OF THE UNITED STATES

MARY LYNN COLLARD,
Defendant-Appellant-Petitioner,

v.

STATE OF TEXAS,
Plaintiff-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI

MARY LYNN COLLARD
BOBBY COLLARD, NEXT FRIEND
1615 UNIVERSITY DRIVE
RICHARDSON, TEXAS [75081]

Questions Presented

Subject Matter Jurisdiction—Trial—Removal

1. By what standard is the federal question tested?

   ("Actually disputed and substantial," per *Grable & Sons*, or "completely preemptive," per *Aaron*?)

2. Are non-cases civil?

3. Does any one of the Due Process issues STATE raises by its "complaint only," non-case process satisfy the Removal standard?

Subject Matter Jurisdiction—Appellate—Review of *This* Remand Order

4. Can a Remand order ever be evaluated independently from the Record?

5. Are §§ 1446(a), 1447(b), and 1449 *in pari materia* with § 1447(c) and (d)?

6. Can any Remand that violates Due Process stand?

7. Does the trial court's irrebuttable presumption against federal jurisdiction violate Due Process?

8. How does *anyone* prove "non-case," which is a "no evidence" point, *without* the (full) state Record?

Subject Matter Jurisdiction—Appellate—Review of the contempt ruling

9. Is contempt an independent basis for review?

10. Did the Municipal Court of (public) Record act contemptuously by refusing to provide Collard a copy of its public Record?

List of Parties

Per the Memo. The parties to this proceeding are as follows:

Petitioner
Mary Lynn Collard
Bobby Collard, Next Friend

Respondent
STATE OF TEXAS
via CITY OF RICHARDSON, TEXAS

Per Rule 14.1(b). In addition to the foregoing party information, STATE's counsel of Record for the proceeding in the court whose judgment is sought to be reviewed was as follows:

PETER G. SMITH (trial counsel)
KAREN NELSON (on the Brief)
MICHAEL B. HALLA (on the motion)
NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

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Citations to decisions below

None

Basis for Jurisdiction

(i) Date Judgment Was Entered
19 September 2006 [+90: 18 December 2006]

(ii) Rehearing, Extension
60-day extension granted 7 November [+60: Saturday, 6 January 2007]

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decision by court of appeals, 28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
28 U.S.C. § 2403(a) may apply. The initial filing here is served on the Solicitor General. The statutory challenges were first raised at trial.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Key Statutory Language

Section 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

28 U.S.C.A. § 1446(a) (Thomson/West 2006).

Section 1447. Procedure after removal generally

(b) [The federal court] may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

28 U.S.C.A. § 1447(b), (c), (d) (Thomson/West 2006).

Section 1449. State court record supplied

Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such district court, and all such process awarded, as if certified copies had been filed in the district court.

28 U.S.C.A. § 1449 (Thomson/West 2006).

Citations to additional authority

31 U.S.C. §§ 5101, 5102, 5103 (2000).

Public Law 105-61, § 641, 111 Stat. 1272, 1318 (1997) (amending 31 U.S.C. § 5118(d)(2)).

Economic Growth and Regulatory Paperwork Reduction Act of 1996, P.L. No. 104-208, § 2609, 110 Stat. 3009, 3009-475 (amending 31 U.S.C. 5118(d)(2)).

The Gold Bullion Coin Act of 1985. P.L. No 99-185 (Dec. 17, 1985), 99 Stat. 1177.

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

Trial Court Jurisdiction

28 U.S.C. § 1331, via § 1441.

Related case

In re Collard (mandamus authority exists!). [1]

Fundamental procedure and evidence

There simply is no such thing as a "complaint only" criminal case. No **pleading**?—no case; criminal or other.

Proving "non-case" is a "no evidence" point.

"No evidence" points require the whole Record.

Dallas County, Municipal Courts of (public) Record, and the three options

(1) Where any state court lacks jurisdiction, it has one lawful option: dismiss. Where Dallas County municipal courts refuse to recognize their limits, two federal options arise. Collard had to activate both of them. (2) *Removal* turns the *trial* court into Night Court. (3) *Mandamus* turns *this* Court into Night Court. The federal system is uniquely qualified to thwart state-sponsored schemes, so the need for seeking such relief will continue for as long as the manifest state court jurisdiction problems persist.

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[1] Expected to be filed soon is a petition for certiorari in A.F., a minor v. STATE. The Supreme Court of Texas, after STATE declined to respond, denied review. In that *Collin* County matter, mandamus in the county court exists, but was denied, and declaratory relief regarding statutory challenge was also denied, all the way up.

There is still another related case, also styled A.F. a minor v. STATE, which is in preparation for appeal (state). Upon trial *de novo*, but with no Information, the *county* court refused to dismiss. So, Florance Removed the two cases to the Eastern District (Sherman)—no magistrate this time. Despite no Remand, the county court proceeded with trial. The advisory panel returned a verdict of "Not Guilty" on the "failure to appear" charge. Testimony proved that the municipal court judge instructed the clerk to file that charge when Florance didn't appear due to the original Removal from the *municipal* court. Florance appealed ***both*** verdicts (state) (no jurisdiction, twice over) and filed a motion for contempt (federal). The federal court remains quite silent.

Law, generally, and Due Process, in particular, are just different in *pro se* cases—is it a gift, here?

In the federal court—doesn't feel like a gift.

Collard faced 103 "complaint only" "criminal" cases in the Municipal Court of (public) Record. A week into Collard's incarceration and court-imposed *de facto* incommunicado (phone only; no glasses with which to read, and no papers in or out), she filed her Notice of Removal via Next Friend. When the Municipal Court of (public) Record *refused* to produce the Record for purposes of the Removal, Collard filed her Motion for Contempt.

One week after Removal, and without the state court Record, the federal court Remanded. Simultaneously, that order (A) blamed Collard for not proving that the matter was removable (i.e., civil), and (B) went silent on the issue of contempt. That silence effectively denied that motion, thereby overtly ***approving*** CITY/STATE's intent to make that public Record unavailable for Removal.

Being fully aware of the restrictions on review of Remand orders, and seeing not only an errant Remand, but also a very serious denial of access and of any meaningful opportunity to be heard, Collard appealed.

On appeal—doesn't feel like a gift, twice over.

Collard timely filed and served her Brief as of 8 June and forwarded the Record in the normal course. CITY/STATE's response was due 33 days later, or 11 July. CITY/STATE went silent until 8 August, when it served its motion for dismissal or extension.

Does the bar care? Demonstrating its scholarship, CITY/STATE sought dismissal on two grounds. First, calling the Removal an *appeal*, CITY/STATE asserted that Collard had failed to exhaust state remedies under *§ 2254*. Secondly, CITY/STATE asserted "failure to state a claim for which relief may be granted." Accompanying that scholarship are CITY/STATE's typical, standard-operating-procedure misrepresentations of fact.

Does the bench care? Initially, the court *granted, ex*

parte, that late, unverified request, apparently on sight (consistent with the former, overruled policy). A-3 (added counsel). That ruling arrived by mail well before Collard's response time was over. In fact, Collard's rather prompt objection went out the same day that the order arrived.

Further, that *ex parte* extension came despite all the published policies on fairness and equality of application of the law, generally, and on requests for extensions not being favored, in particular. Notice of the formal change in policy has been clearly announced. *See* 5th Cir. Rs. 26.2 and 31.4.1, as well as the FAQ page on the court's web site (40 days and 30 days, respectively). Moreover, CITY/STATE's late, unverified motion doesn't even remotely allude to the slightest inkling of "good cause."

Things happen, and in normal circumstances, Collard would be all too glad to allow CITY/STATE all the time it thought it needed. But, CITY/STATE's habit for flagrant disrespect for law, shown before, during, *and* after the trial in the Municipal Court of (public) Record, has greatly depleted the available reserve of patience. Just to recall some highlights, CITY/STATE, acting at all times under the "advice" of the same "attorneys" as now, (A) jailed Collard for 18 days to make sure she'd attend her "trial" and "sentencing" for 101 alleged housing code violations and two traffic citations, (B) delivered Notice that charges *existed* well after the "day before any proceeding" deadline, *see* Art. 45.018(b), and delivered Notice of the "complaints," themselves, on the day of trial, thus, even more flagrant abuse of the "day before any proceeding" deadline, (C) rendered her incommunicado for the entirety of that rocket-docket pre-trial period, thereby preempting any and all pre-trial participation, (D) on Friday, agreed to produce the public Record, but then on Monday, *refused* to produce the public Record for the Removal, going so far as to request guidance from STATE's AG's Office on whether they *may* release a ***public*** Record, which letter the law firm *faxed* to the municipal court clerk, but

mailed to Austin, (E) compelled Collard (1) to disclose to both counsel for CITY/STATE *and* the court the contents of the trial notebook prepared for her, allowing each to study it completely, or (2) to proceed without it, (F) unilaterally revoked her "deferred disposition," without motion, evidence, or hearing, ***solely*** because she exercised her (statutory) right to appeal, and (G) engaged in all sorts of additional shenanigans regarding non-preparation of the Record for the state system appeal.

So, on or about 1 September, CITY/STATE, further demonstrating all the more how much it couldn't care less, generally, about the law or the system, filed what it calls a Brief. It boldly identifies a non-existent court and the wrong case, but it identifies not at all clearly which entity's Brief it was, whether CITY's or STATE's. Still demonstrating its scholarship, thus its priority on creating and misstating facts rather than studying law, CITY/STATE's first argument is that Collard's Notice of Appeal was late, because the deadline for ***criminal*** [2] cases is 10 days! [3]

In response, Collard filed three motions, (i) to substitute parties, because CITY claims to be the "real party at interest" in the STATE v. COLLARD cases, (ii) for time to get a certified Record filed, because CITY/STATE lost the Record on appeal, submitting, instead, a non-certified PACER printout, and (iii) to strike the Brief, for lack of identifiable signature authority (whose Brief is this, CITY's or STATE's?). But, why did she even bother?

Again, well before the response time expired, the appellate court ruled. Second time around on CITY/STATE's motion, the court *sua sponte* evaluated their subject matter jurisdiction and dismissed the appeal, but, in the context of that motion, formally announced the originally granted extension request to be moot.

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[2] STATE v. COLLARD, Case No. 3:06-CV-317-M (N.D. Tex.).

[3] Remand: 28 Feb. Per CITY/STATE, "10 days" means 10 March.

Argument

Remedies Requested

Reverse and remand.

The appellate court *has* jurisdiction. Due Process requires both review and reversal of this Remand order.

Summary

Galileo Galilei.

"All truths are easy to understand once they are discovered; the point is to discover them."

The state court Record—Collard's sole source of "no evidence" for proving federal jurisdiction.

STATE must ***prove*** standing and jurisdiction. Where STATE files no **pleading**, STATE offers no proof; hence, initiates no case, criminal or otherwise. These non-cases are civil for all purposes, including Removal.

A "non-case" point is a "no evidence" point. How does *anyone* prove "no evidence" without the (full) Record?

Further, this Remand facially and falsely *presumes* STATE satisfied its burden, i.e., that all matters in a "criminal case only" jurisdiction court are criminal cases. Procedurally, since the statutes *allow* "complaint only" matters, Due Process presumes, facially, that ***none*** of such matters are criminal cases. Factually, that Record contains no **pleading**; hence, no criminal case.

What CITY/STATE and the federal court did was combine to make unavailable Collard's sole source of "no evidence." That "no evidence" ***proves*** the non-criminal, thus civil, nature of the cases Removed. By not compelling CITY/STATE to produce that Record, the federal court rendered its facially false presumption irrebuttable. Remand orders based on such serious Due Process violations as these are both void and reviewable.

Due Process isn't just an exception to the general rule limiting review of Remand orders. It's an essential condition precedent for all orders, including Remands.

Subject Matter Jurisdiction—Trial—Removal

1. By what standard is the federal question tested?

"Actually disputed and substantial."

The standard per *Grable & Sons* is "actually disputed and substantial."

"Completely preemptive."

The standard per *Aaron*, 876 F.2d at 1161-63, is "completely preemptive."

Each is satisfied here.

The *Grable & Sons* standard seems to be a bit broader (less restrictive) than the *Aaron* standard. So, satisfying *Aaron* will also satisfy *Grable & Sons*.

One phrasing of the question.

Here's the completely preemptive federal question, sounding in Due Process, raised at the institution of the prosecution by STATE's current **non-pleading** based system: May STATE initiate litigation, not only without authorized counsel, but also with the full intent of depriving property, liberty, or both, and with the full intent of never coming anywhere near satisfying standing, subject matter jurisdiction, or Due Process?

Looking ahead, certain state statutes say yes. Certain other state statutes say no. Due Process says no. Separation of Powers says no.

2. Are non-cases civil?

No Information or Indictment.

If it's a *criminal* case, then there'll be a **pleading**, whether an Information or an Indictment. Art. 27.01. *See also* TEX. CONST. art. 5, § 12. *Cf. Hurtado.*

Statutes violate Due Process, Separation of Powers.

Arts. 2.05, 45.018, and 45.019, as chief representatives of the problem, purport to allow STATE to initiate a criminal proceeding in municipal courts without a

pleading, i.e., without (authorized) counsel. *See also* TEX. CONST. art. 5, § 17. It's curious that art. 5, § 17 addresses county courts, not municipal courts, *and* that Art. 27.01 formally disallows "complaint only" cases in the county courts. [4]

But, even without Art. 27.01, STATE simply can't appear in court without counsel, i.e., without authorized signature. *Rowland*, 506 U.S. at 201-03 (artificial entities must have counsel); TEX. R. CIV. P. 7; *Kuntoplast of Am., Inc.* (corporations must have licensed counsel); *Computize, Inc.*, 992 S.W.2d at 612 (corporation's summary judgment response must be made through licensed counsel); *Moore*, 874 S.W.2d at 327 (corporations must be represented by licensed counsel); *Dell Dev. Corp.*, 743 S.W.2d at 303 (same); *Globe Leasing, Inc.*, 437 S.W.2d at 45-46 (same).

Still further, even if the "complaint" *were* signed by an attorney authorized to represent STATE, i.e., employed by the DA's office, no attorney can be a necessary witness *and* the attorney of Record in the same case. ABA Rule 3.7, TEX. DISCIPLINARY R. PROF'L CONDUCT 3.08. This is no less an ethics problem than an attorney's testifying against his client. *Garcetti v. Ceballos.*

"Complaint only" criminal cases are non-cases.

In short, there simply is no such thing as a "complaint only" criminal case. There must be a signed **pleading**.

WHO THE PARTIES ARE MATTERS.

Collard is not saying that federal question jurisdiction arises every time a state court lacks jurisdiction. What Collard is saying is that where (A) *STATE* purports to activate a *criminal* case, highly restricted from the outset, with the full intent to deprive property or liberty, or both, and (B) *STATE* wholly fails to establish even its standing, thus wholly fails to trigger subject matter jurisdiction in

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[4] The Florance case raises a thought along these lines. In general, how *does* trial *de novo* work without an Information? Specifically, where there is no Information, thus no jurisdiction in the county court for *any* trial *de novo*, how is there *any* remedy at law (appeal)?

the state court, then (C) the non-case (1) is *civil*, and (2) instantly raises completely preemptive federal questions, including Due Process and Separation of Powers. This is especially the result where the state court has "criminal case only" jurisdiction. *See* GOV'T CODE § 29.003 (municipal court of Record jurisdiction limited to criminal cases); § 30.00005 (municipal court of Record jurisdiction may be expanded by city ordinance); Muni. Code, City of Richardson, art. VIII, § 2-180 (Ord. No. 3238-A, § 1, 8-9-99) (criminal cases only).

Where STATE *files* no **pleading**, Arts. 21.20, 21.21, 21.22, and 27.01, and *serves* no **pleading**, *cf. Murphy Bros.*, at any time, much less by its own deadline, i.e., at least one day before any proceeding, *see* Art. 45.018(b), STATE never establishes its standing. *See Tex. Dept. of Parks & Wildlife v. Miranda* (standing requires "actual grievance"). Thus, STATE never satisfies any jurisdiction in any court, much less the limited jurisdiction of the "criminal case only" jurisdiction court. Thus, the *non-case* STATE asserts can in no way be a *criminal* matter.

Non-cases are civil.

For a case to qualify as *criminal*, Due Process requires an authorized **pleading**. Where there is no authorized **pleading**, there is no case at all, criminal or otherwise. What else can a non-case be but civil?

3. Does any one of the Due Process issues STATE raises by its "complaint only," non-case process satisfy the Removal standard?

The "non-case" "case or controversy."

At the risk of sounding Hegelian, STATE compels us into the "non-case" "case or controversy." STATE initiates a non-case where it files no **pleading**. Thus, it's not only "not criminal," but also "not anything." For so long as STATE still thinks its non-cases *allow* deprivation of property and liberty, there'll be a "case or controversy."

Specifically, is a civil non-case that raises such monstrous, threshold federal questions one that STATE can bring in the *federal* court? *Cf.* § 1441(a). ***Of course*** it is! ***Of course*** it is! "Federal court, by filing this unauthorized, civil non-case, we request that you bless our statutory obliteration of Due Process and perversion of Separation of Powers by ordering the defendant fined and jailed." Civil + Completely preemptive federal question = Removal.

Why do Rules 11 (no signature?—10-day notice) and 12(b) even exist? Because threshold jurisdictional analysis and analysis of the case are two different questions.

The threshold Due Process violations.

Focusing on the core of the matter, ***these*** non-cases are designed with § 1331 *specifically* in mind. Overtly, at the institution of the prosecution, STATE, via its "complaint only" process, seeks judicial authority not only to deprive property, and liberty, but also via statutes that defy certain ***key*** Due Process safeguards, permitting

- no authorized signature, *see* Question 2; thus,
- no standing, STATE failing, on the state side, to prove "actual grievance," *Tex. Dept. of Parks & Wildlife v. Miranda*, and, on the federal side, to prove any "case or controversy," *Lujan*;
- no service of citation, at all, *cf. Murphy Bros., Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."), much less consistent with its own procedural rules; *see* Art. 45.018(b); thus,
- no Notice.

This list (A) applies to every single matter "filed" in the municipal courts, and (B) doesn't even scratch the surface of the federal questions that riddle this matter.

Completing the journey.

These violations ***are*** the "case or controversy." By even "filing" non-cases, STATE raises threshold federal questions that satisfy the Removal standard.

Subject Matter Jurisdiction—Appellate—Review of *This* Remand Order

4. Can a Remand order ever be evaluated independently from the Record?

Four corners only?

Is Remand evaluated solely within the four corners of the order, or does the Record have to justify it? In general, all final orders must have evidence of Record supporting them. *See, e.g., Blount*; *Cannon*; *Johnson*; *McCreary County* (for equity, the Record is all the more important). *Cf.* administrative Record cases, e.g., *Del Vecchio*; *Nevada Consol. Copper*; *Allentown Mack Sales & Serv.*

The general rule—Remand is not directly reviewable.

Per § 1447(d), remand orders within the scope of § 1447(c), i.e., procedural (e.g. timing) defects or subject matter jurisdiction, are simply not directly reviewable. *Thermtron Prods. See also Gravitt*; *Royal*, 685 F.2d at 125.

In what way does § 1447(c) shape the scope of review?

Looking solely at the *order*, it would appear to be non-reviewable. But the *Record* tells a different story. So, where the Record isn't examined into regarding timing or a protracted study of jurisdiction, i.e., the § 1447(c) topics, but rather for Due Process violations, can the appellate court limit its review to the four corners of the order?

The analytical process includes review of the Record.

It's not practical here to review ***all*** Remand cases back to 1887, but here are a few of the more recent ones. The only way to determine validity of federal (diversity) jurisdiction in *Thermtron Prods.* is review of the federal Record. That Record did not support Remand.

The Record in *Gravitt* initially supported Remand, because the issue of complete diversity had been challenged via competent evidence.

In *Sheet Metal Workers'*, Rehnquist, J., dissented from denial of cert. The Fifth Circuit reviewed the Remand via

mandamus, which review Rehnquist found to violate the statute. The point is that whether review of Remand was allowed or not called for a review of the Record, not just of the four corners of the Remand order, itself.

Did the congress intend to abrogate Due Process?

Since it's highly doubtful that the congress intended to write Due Process *out* of Removal, the Record must justify Remand. The congress could not have even remotely intended non-reviewability to mask, or cover, or tolerate, or allow, much less encourage, the level of Due Process violation committed to justify *this* Remand.

From this Record, Remand isn't supported.

Before CITY/STATE lost the Record, the only evidence of Record was Collard's verified Notice of Removal, which remains unrebutted, *O'Connor*, and which ***in no way*** supports Remand.

> 6. For purposes of removal, these are all civil/ commercial matters, because the municipal court has no subject matter jurisdiction. STATE has filed no authorized or competent **pleading** that charges any criminal violation or initiates any criminal trial process. Thus, there is no case or controversy; there is no "actual grievance."
>
> 7. Specifically, there is no Information charging any alleged misdemeanor. As is still to be confirmed for all these "cases," there are only "citations," or "complaints," none of which is expected to be signed by *any* attorney, much less one authorized to represent STATE.

Collard's verified Notice of Removal, p.2 ("Why, For Purposes Of Removal, These Are *Civil* Matters").

After CITY/STATE lost the Record, if there is no certified Record on appeal at all, then there is even *less* evidence of Record in support of Remand!

5. Are §§ 1446(a), 1447(b), and 1449 *in pari materia* with § 1447(c) and (d)?

§ 1447(c) and (d) are read *in pari materia*. *See Thermtron Prods.*; *Things Remembered*; *Quackenbush*.

Does the plan presume review of the state Record?

If we're going to apply strict construction, doesn't that apply to the *whole* plan? Surely, the congress presumed satisfaction of the *whole* statutory plan. Just as surely, the congress had full expectation that "keep or Remand" would be based on and justified by the *federal* court's Record, which, in turn, would certainly include the *state* Record. *See* §§ 1446(a), 1447(b), 1449.

Judicial Notice v. actual, physical inclusion.

Is judicial notice a substitute for the very clear congressional intent that the state Record be filed with, and reviewed by, the federal court? We have choices, and regarding getting evidence into the *federal* Record, there doesn't seem to be any prohibition on taking judicial notice for purposes of Remand.

INCLUSION—FILING OF STATE RECORD IS MENTIONED IN THREE DIFFERENT PROVISIONS.

But, if *that* were the plan, why do the congress discuss the filing of the state Record in the federal court in *three* different places? Further, if anything *does* qualify for judicial notice, it's the common knowledge that STATE *never* files a **pleading**, *never* satisfies standing, and *never* satisfies jurisdiction, despite which absences, normally and historically fatal to any case, STATE deprives property, and liberty, with full judicial blessing!

INCLUSION—"WELL-PLEADED COMPLAINT" RULE.

How does the "well-pleaded complaint" rule, *Louisville & Nashville R. Co.*, *Franchise Tax Bd. of Cal.*, even remotely begin to apply without a state court complaint *to* review for its "well-pleaded" character? *Cf. MetLife.*

INCLUSION—JURISDICTION DETERMINED BY REVIEW OF COMPLAINT.

First Circuit. *Brough*, 437 F.2d at 749 (citing *Pan Am.*, 366 U.S. at 663 and *Skelly Oil*, 339 U.S. at 672).

Second Circuit. *Poss*, 299 F.2d at 359 (distinguishing review for § 1441 from § 1442).

Fifth Circuit. *In re Carter*, 618 F.2d at 1100-01; *Romick*, 197 F.2d at 370 n.4 (citing *Union & Planters'*; *Louisville & Nashville R. Co.*; *Gully*).

But cf. EDS, 360 F. Supp. at 1047 (trial opinion, Removal jurisdiction based on Notice of Removal and counterclaim); *Brown*, 356 F.2d at 606 (jurisdiction founded on petition for removal, civil rights case).

Tenth Circuit. *Oldland*, 179 F.2d at 412 (citing *Wecker*).

INCLUSION—PHYSICAL TRANSFER OF RECORD REINFORCES STAY.

Another feature that speaks against reliance on mere judicial notice is the automatic stay. § 1446(d); *O'Shea*, 414 U.S. at 512 (Appendix). There's something about real-time, hands-on, physical transfer of that public Record, from state court to federal court, that reinforces the entire letter and purpose of the stay.

The state Record provisions are *in pari materia*.

The *whole* Removal plan expects the state Record to be in the federal Record for review by the federal court.

6. Can any Remand that violates Due Process stand?

Due Process violations vitiate orders.

See, e.g., Boddie (denial of access to the court); *Milliken* (Record must support the order; Notice, opportunity to be heard, fair play, substantial justice); *International Shoe* (Notice, opportunity to be heard); *Mullane* (Notice, opportunity to be heard); *Armstrong*, 380

U.S. at 552 (Notice, meaningful time, meaningful manner); *Sniadach* (Notice, opportunity to be heard); *Fuentes v. Shevin* (Notice, meaningful time); *N. Ga. Finishing* (Notice, opportunity to be heard, even for corporations (i.e., the shareholders)); *Burns* (Notice, opportunity to be heard, on upward departure); *Hamdi* (denial of access and of opportunity to be heard); *Jones* (Notice, opportunity to be heard).

Remand is different, but not *that* different.

"Once it is determined that due process applies, the question remains what process is due." *Morrissey*, 408 U.S. at 481. *See also Loudermill.*

Sua sponte (i.e., "no formal Notice') review of jurisdiction is a given and is not at issue. The problem here is the "meaningful opportunity to be heard" part.

Thus, where Remand fails to afford a "meaningful opportunity to be heard," it cannot stand.

7. Does the trial court's irrebuttable presumption against federal jurisdiction violate Due Process?

The presumption is not only facially false ...

Here's the federal court's presumption. Where (A) the "state court" involved is a municipal court *of (public) Record*, which has "criminal case only" jurisdiction, then (B) the case must be criminal. From there, the "thus not civil, thus non-Removable" part follows.

This presumption is systemically unjustifiable and universally false on its face. There simply is no such thing as a "complaint only" criminal case. *See* Question 2. Since STATE is an artificial entity, STATE cannot appear without authorized signature, i.e., a **pleading**. A witness' "complaint" is not a **pleading**.

... but also rendered irrebuttable.

To compound the problem, the federal court declined to hold CITY/STATE in contempt for its *refusal* to produce the sole evidence that proves Collard's position. By so

doing, the federal court rendered its already offensively false presumption irrebuttable. *Cf. Elkins*; *Salfi* (in particular part III, discussing why *Salfi* is distinguished); *LaFleur*; *Vlandis*; *Stanley*. [5]

This one violates Due Process.

Removal is a statutory right. The Removing party carries the burden to prove the Removal. The Due Process violation here thwarts the entire Removal plan.

8. How does *anyone* prove "non-case," which is a "no evidence" point, *without* the (full) state Record?

"No evidence" points require the whole Record.

> [W]e hold that Mississippi may not withhold from M.L.B. "a 'record of sufficient completeness' to permit proper [appellate] consideration of [her] claims." *Mayer*, 404 U. S., at 198.

M. L. B. v. S. L. J., 519 U.S. at 128. This applies the very fundamental rule that sounds in Due Process. *See, e.g., Aspen Skiing Co.* (sufficiency point, review of *whole* record); *Lynch*, 465 U.S. at 680 (insufficiency determined from *whole* Record); *Mayer* (indigence, insufficiency point, *verbatim* transcript, sufficiency of alternatives).

The federal court rendered Collard's burden impossible to satisfy.

The federal court says, "Prove jurisdiction," and, simultaneously, "But, you can't use the only evidence on the face of the planet that *will* prove it." *Cf. Boddie*. It's *impossible* to prove the non-criminal, thus civil, nature of the non-cases *without* the state Record. [6]

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[5] Not all irrebuttable presumptions violate Due Process. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

[6] Not 100% true. The Notice of Removal is verified and unrebutted. *Cf. EDS* (trial opinion, "keep or Remand" based on Notice of Removal).

There's no question that the Removing party carries the burden to prove federal jurisdiction. But, how in blue blazes is that even remotely possible where (A) as of the time of Removal, STATE never served anything on Collard; meaning (B) that not only the "best evidence" but also the only evidence of *federal* jurisdiction *IS* the state trial court's *public Record*; (C) the state trial court *refused* to produce its *public Record*, not even to a party to those proceedings; (D) the Removing party even filed a motion for contempt based on the state court's *refusal* to produce its *public Record*; and (E) the federal court not only Remanded, in exactly one week, without one iota of a glimpse at the state court's *public Record*, but also fully encouraged the state court's *refusal* to produce its *public Record*, by denying, by silence, that motion for contempt?

There may be yet another false presumption at work.

IF a party ***is*** served, THEN there's no compelling need to depend on getting the state Record from the state court. But, where there is ***no*** service of the "complaints," until the day of trial (here, the day after Remand), [7] the Removing party has no other way than by filing the state Record to prove not only no *filing* of any **pleading**, but also no *service* of any **pleading**, either. The point is too easy to prove or disprove via the state Record *not* to have the state Record.

So, if the federal trial court presumed satisfaction of Art. 45.018(b), then such false presumption was made irrebuttable by not even allowing the state Record filed. This additional manifest Due Process violation (A) made Collard's burden impossible, and (B) rendered *this* Remand both void and reviewable.

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[7] It is not lost on Collard that Removal during incarceration means transfer to federal custody, which Collard was spared via the "instant" Remand. However, habeas and expungement would have followed.

Subject Matter Jurisdiction—Appellate—Review of the contempt ruling

9. Is contempt an independent basis for review?

The Removal plan is silent about contempt.

The court dismissed *sua sponte* for lack of jurisdiction. But, even if this Remand order were not reviewable, the Removal plan is completely silent about contempt.

So is the appellate court.

So, how the appellate court *lacks jurisdiction* over a completely separate federal question is a total mystery.

> In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?

Bailey, 259 U.S. at 37. This was paraphrased also to say,

> And so, we would have to be that "blind" Court, against which Mr. Chief Justice Taft admonished in a famous passage, *Child Labor Tax Case*, 259 U.S. 20, 37, that does not see what "[a]ll others can see and understand" not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation.

Rumely, 345 U.S. at 44. This has been further paraphrased to say,

> *Cf. United States v. Rumely*, 345 U.S. 41, 44 (1953) (courts must not be "'blind'" to what "'[a]ll others can see and understand'").

Burger King Corp., 471 U.S. at 486.

For Collard to discuss, at all, the order which granted instantly, and *ex parte*, CITY/STATE's late, unverified, unjustified request for more time may seem at first to "major in the minors," but there's not a lot of appellate

activity in this one beyond the two divergent rulings attributed to that one motion. If the court were induced by fraud to grant that extension, *see* A-3 n.1, then they were caught off guard. Of the several ways to look at this second ruling, here is Collard's view. The appellate court have done all they can with one motion to call this Court's attention to the contempt issue.

Contempt is its own federal question.

See FED. RS. CIV. P. 4.1(b), 37(b)(1), 37(b)(2)(D), 45(e), 53(c), 56(g), and 70. *See also* 28 U.S.C. §§ 636(e) (magistrates), 1481 (bankruptcy), 1784 (foreign), 2405 (garnishment), 2521 (court of federal claims) and 3003(c)(8)(C) (debt collection). Even contempt in a state case can raise a federal question. *Maness*.

Appeal of contempt ruling is its own procedure.

Where a contempt ruling is *entered*, it's a final, not an interlocutory, matter. *See Perlman* (no contempt ruling, but rights issue compelled review); *Cobbledick* (motion to quash denied, but no contempt, so no finality); *Ryan* (same; best efforts to comply not an injunction); *Bray* (criminal contempt is an independent proceeding); *Catholic Conf.* (non-party held in contempt for non-compliance with discovery).

So, it's extraordinarily clear that the contempt issue is 100%, absolutely, positively *within* appellate jurisdiction.

No other opportunity to reach the federal question.

Denial of contempt is likely interlocutory. *Cf. Risjord* (denial of motion to disqualify counsel is interlocutory). *See also Gordon* (appeal of case where contempt was requested but not granted); *Sterling* (contempt requested against Tex. governor but not granted); *Cogen* (only an order *granting* contempt may obtain interlocutory review); *Union Tool Co.* (even remedial, as distinguished from punitive, contempt is interlocutory); *Doyle* (same); *Alexander* (no contempt?—nothing to appeal); *In re Christensen Eng'g Co.* (remedial contempt likened to sanctions, no interlocutory appeal; criminal contempt may

be appealed when ordered; if both are issued, criminal character prevails).

> A contempt proceeding is sui generis. It is criminal in its nature, in that the party is charged with doing something forbidden, and, if found guilty, is punished. Yet it may be resorted to in civil as well as criminal actions, and also independently of any civil or criminal action.

Bessette, 194 U.S. at 326. Criminal contempt must have a form of review, and writ of error works. But, in general, civil contempt, even if granted, is interlocutory. *Id.*

Remotely, such denial could be "final." *See Cohen* ("collateral order doctrine"); *Idlewild Liquor* n.2 (finality, "effectively out of court"); *Moses H. Cone Hospital* (both).

Either way, since the *municipal* court lacks jurisdiction, and since the *federal* Record is not included in the Remand, it's impossible to reach the merits of this matter by any other means. *Cf. Ritchie,* 480 U.S. at 49 n.7 (doubt existed as to whether subsequent opportunity to address federal issue would exist). Further, in *Ritchie,* the state appellate process ***didn't*** stall out, as it has here. [8]

Remand is a "final" order.

So, how does the denial of contempt, by silence, *in the final order,* lead to *lack* of jurisdiction on appeal??

The analogy to sanctions.

Sanctions and contempt are different. *Cunningham; Willy. Cf. In re Christensen Eng'g Co.* Even though sanctions are considered interlocutory, sanctions pose an independent federal question, even where the federal court has no jurisdiction over the case. *Willy.*

The analogy to mandatory discovery.

THE GENERAL RULE.

It wasn't very many years ago that the procedural rule changes made certain basic, common, regular aspects of discovery mandatory. FED. R. CIV. P. 26(a). Here,

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[8] *Cf. In re Collard* (presumption of adequate remedy at law?).

STATE would defend its position, i.e., prove its standing and the municipal court's jurisdiction, with the Municipal Court of (public) Record's public Record, rendering that public Record subject to automatic initial disclosure, Rule 26(a)(1)(B), as well as automatic pre-trial disclosure, per Rule 26(a)(3)(C).

THE INCARCERATED *PRO SE* LITIGANT EXCEPTION.

To apply the analogy completely, we need also note the exception to mandatory discovery in cases filed by incarcerated *pro se* litigants. Rule 26(a)(1)(E)(iii).

Regarding this systemically entrenched, unequal protection, bright-line, overbroad *policy*, we know *why* this class is singled out. [9] Economics is a study of limited resources, and economics ***compels*** certain commonsense, "let's not be blind to the reality," decisions. Thus, while being all too fully aware of that reality, we still must also ask, at the *instant* we identify such a class, doesn't the exception prove the rule? So, wouldn't the policy for this discovery exception be better as thought of along the lines of "*repeat* incarcerated *pro se* litigants," or do we *intend* to encourage STATE to continue to incarcerate as was done here? This very same question arises for a *pro se* habeas petition challenging the *threshold* incarceration, because *that* exception applies only to convictions and sentences. Rule 26(a)(1)(E)(ii).

COMPARE AND CONTRAST WITH THE REMOVAL PLAN.

Regarding the mandatory discovery exception *language*, in contrast with Removal, the Removal plan doesn't in any way, shape, manner, or form even remotely suggest any "*pro se* exception." Thus, the courts have written in that limitation, not the congress, which limitation was addressed in, and prohibited by, *Boddie*.

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[9] However, as has been proved over and over again, the *pro se*'s understand certain fundamental legal realities that jurists and "attorneys for the government" throughout "this state" don't, yet.

Summary—Contempt issue is basis for jurisdiction.

Nothing about the Removal plan renders *contempt* unreviewable. To claim "no jurisdiction" over a contempt issue suggests that even § 1447(c) sanctions are unreviewable. Where the sole source of "no evidence" is the state Record, STATE's requirement to produce the public Record is non-discretionary. The federal court's duty to require *something* from the state Record, and then to review that information is non-discretionary. So, contempt is ***fully*** applicable. But, let's say that all of that *were* optional. It's *still* a federal question. Moreover, it's a federal question that will not be available for review in ***any*** case where the state court lacks jurisdiction.

With or without jurisdiction to review manifest Due Process and Separation of Powers problems in Remand orders, the appellate court ***have*** jurisdiction over contempt issues on review of final orders.

10. Did the Municipal Court of (public) Record act contemptuously by refusing to provide Collard a copy of its public Record?

Compelling performance of duty.

The purpose of contempt proceedings is to uphold the power of the court, and also to secure to suitors therein the rights by it awarded. As said in Re Chiles, 22 Wall. 157, 168, sub nom. Texas v. White, 22 L. ed. 819, 823:

> 'The exercise of this power has a two-fold aspect, namely: first, the proper punishment of the guilty party for his disrespect to the court or its order, and second, to compel his performance of some act or duty required of him by the court, which he refuses to perform.'

Bessette, 194 U.S. at 327.

Comparison with the automatic stay.

At the threshold, there aren't any orders, yet. Thus, technically, at the threshold, delivery of the public Record is a *statutory* duty. So, we can distinguish the *source* of the mandamus, affirmative-conduct requirement to produce the public Record for Removal. But, we can do the very same with the injunctive nature of the automatic stay, violation of which is also subject to enforcement/ protection via contempt. *Cf. Citizens Bank* (bankruptcy, automatic stay, contempt ultimately denied, but it's the applicable remedy).

This goes way beyond Removal.

STATE never filed anything worth serving, and what is "filed" wasn't served until the day of trial. Thus, at the time of Removal, Collard had nothing from the state Record that she *could* file with the Notice of Removal.

Then, the Municipal Court of (public) Record *refused* Collard, the defendant in these 103 cases, a copy of the public Record, needed to satisfy her burden for Removal. Demonstrating its scholarship, the law firm for CITY/ STATE felt it needed to check with STATE's AG's Office in Austin to determine whether a court of public Record *may* release a copy of its public Record, even to a party. If federal law and request by a party aren't motivation enough, what could it possibly take?

Let's not be blind to the reality. CITY/STATE's *refusal* to produce the Record, as supported by *both* the federal trial and appellate courts, is just one ***more*** by-product of the systemic bias, and general "don't care" perspectives, against *pro se*'s. The representation issue trumps the legal analysis, practically from the outset. *Pro se* abuse seems to trump ***all*** law, even that considered systemically structural. *See Dominguez* (distinguishing structural rights from substantial rights, citing *Fulminante*, 499 U.S. at 309-10 (identifying key structural rights, which, in turn, cites, e.g., *Tumey*)). Where the bench doesn't care, the bar most certainly won't.

Synopsis

Opportunity to fix problem may very well be a gift.

"The two most powerful warriors are patience and time." Leo Tolstoy. Maybe it just depends on whose ox is being gored, but how much longer do *pro se*'s have to wait? How much longer is application of the law to be denied and delayed? There comes a time when time feels very, very short, which may typically accompany the time when patience has long since become depleted.

What in no way feels like a gift in the proceedings below will turn out to be a gift when the problem finally gets fixed. We have choices. We can play "let's blind ourselves to it," which compels embarrassing, non-traditional solutions, or we can identify it for what it is and find a traditional solution, in the normal course.

Where there is no **pleading** filed ***or*** served, the municipal courts have no jurisdiction. The state statutes purporting otherwise violate Due Process and Separation of Powers. Where the state courts refuse to apply the law, and limit themselves, the several federal options arise.

Removal of non-cases.

IMPORTANT QUESTION OF FEDERAL LAW.

Whether non-cases are civil is an important question of federal law that has not been, but should be, decided by this Court.

DIRECT CONFLICT WITH FEDERAL STANDARDS.

The associated matters of the Due Process violations built into STATE's "complaint only," non-case procedure and application of the proper Removal standard, the handling of which here directly conflicts with relevant decisions of this Court, of other courts of appeals, and even of their own, and has so far departed from the accepted and usual course of judicial proceedings, and has encouraged the same departure by the trial court, as to call for the exercise of this Court's supervisory power, will likely be recognized right after the civil nature of non-cases is established.

What process is due?—Important Questions of Federal Law.

Each of the following is an important question of federal law that has not been, but should be, decided by this Court:

- Is any Remand reviewed solely from the four-corners of the order?
- Is the filing of and review of the state Record *in pari materia* with the Removal plan?
- Where errors regarding timing and jurisdiction may be beyond review, do we add violations of Due Process to the non-reviewability list?
- Does the trial court's universally false presumption against federal jurisdiction, made irrebuttable by overt endorsement of CITY/STATE's *refusal* to produce the state Record, violate Due Process?
- If the state Record is material, does rendering the Removing party's burden of proof impossible, by disallowing the state Record, violate Due Process? Whether the state Record is material or not, does ignoring the verified and unrebutted Notice of Removal violate Due Process?

Contempt.

DIRECT CONFLICT WITH FEDERAL STANDARDS.

An appellate court's ruling of "no jurisdiction" over a contempt issue directly conflicts with relevant decisions of this Court, of other courts of appeals, and even of their own, and has so far departed from the accepted and usual course of judicial proceedings, and has encouraged the same departure by the trial court, as to call for the exercise of this Court's supervisory power,

IMPORTANT QUESTION OF FEDERAL LAW.

Whether the state court's *refusal* to produce its Record for Removal constitutes contempt is an important question of federal law that has not been, but should be, decided by this Court.

Remedies Requested

Collard requests

1. That this Court grant this petition, issue the writ of certiorari and take jurisdiction of this matter;
2. That this Court reverse the judgment on appeal, and remand to the trial court to reevaluate Removal, per any appropriate guidance or additional instructions;
3. The opportunity to brief any additional issues the Court may identify;
4. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
5. That costs be taxed to CITY/STATE; and
6. Any and all other relief at law, in equity or sui generis to which she may show herself justly entitled.

Respectfully submitted,

Mary Lynn Collard
Without prejudice

Bobby Collard, Next Friend
Without prejudice

1615 University Drive
Richardson, Texas [75081]

Appendix A
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Rule 14.1(i)(i)—Appellate Opinion

2006 Sep 19—Cover Letter and Order

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III TEL. 504-310-7700
CLERK 600 S. MAESTRI PLACE
NEW ORLEANS. LA 70130

September 19, 2006

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 06-10358 State of TX v. Collard
USDC No. 3:06-CV-317

Enclosed is an order entered in this case.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: */s/ Mary Stewart*
Mary Stewart, Deputy Clerk
/mcs 504-310-7694

Ms Mary Lynn Collard
Mr Peter Gardner Smith
Ms Karen S Mitchell, Clerk

MOT-2

U.S. COURT OF APPEALS
FILED
SEP 19 2006
CHARLES R. FULBRUGE, III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10358

STATE OF TEXAS
Plaintiff - Appellee

v.

MARY LYNN COLLARD
Defendant - Appellant

Appeal from the United States District Court for the Northern District of Texas, Dallas

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Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that Appellee's motion to dismiss appeal for lack of subject matter jurisdiction is *GRANTED*

IT IS FURTHER ORDERED that Appellee's alternative motion to extend time to file Appellee's brief is *MOOT*

MOT-21 (initials of the three jurists)

Rule 14.1(i)(ii)—Additional Orders

Fifth Circuit—Granting extension of time

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS. LA 70130

August 7, 2006

TO: Mr Michael Boice Halla

No. 06-10358 State of TX v. Collard
USDC No. 3:06-CV-317

As of this date we have added counsel for the appellee. [1] The appellee's brief will be due within 30 days from the date of this letter.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: */s/ Jodi Rodrigue*
Jodi Rodrigue, Deputy Clerk
504-310-7718

Enclosure cc w/encl: Ms Mary Lynn Collard

BR-4

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[1] N.B. Where the law firm stays the same, how is counsel "added?" If individual lawyers *do* matter, then the extension was obtained via fraud on the court, because HALLA took no part in the Brief. *MLC, BC*

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB 2 8 2006
CLERK, U.S. DISTRICT COURT
By _____
Deputy

Ctg M ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STATE OF TEXAS,	§	
Plaintiff,	§	
v.	§	No. 3:06-CV-317-M
MARY LYNN COLLARD,	§	
Defendant.	§	

ORDER

All federal courts are courts of limited jurisdiction. *In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999). For the most part, that jurisdiction derives from statutory grants of the Congress. *Id.* "No authority need be cited for the fact that jurisdiction is always at issue; without it, a court is powerless to act." *Brazoria Cty. v. EEOC*, 391 F.3d 685, 688 (5th Cir. 2004). Defendant attempts to invoke the removal jurisdiction of this Court, which is governed by 28 U.S.C. § 1441(a):

> [A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

The removing party bears the burden of establishing that federal jurisdiction exists. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1408 (5th Cir. 1995). Defendant has not established (1) that this is a civil action, or (2) that the district courts of the United States have original jurisdiction over this action. She has not proved that federal jurisdiction exists under §1441(a).[2] As a result, the Court REMANDS this case to the proper State court.[3] [12]

SO ORDERED.

February 28, 2006.

/s/ Barbara M. G. Lynn
BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

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[2] N.B. Shouldn't this be § 1331? *MLC, BC*

[3] [n.1 in the original] In her Notice of Removal, Collard identifies this court as the Municipal Court of Record, City of Richardson, Dallas County, Texas.

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from an opinion.

Rule 14.1(i)(v)—Statutes and Rules

***See* Appendix with *In re Collard*, No. 05-1445**

Rule 14.1(i)(vi)—Additional Essential Materials

***See* Appendix with *In re Collard*, No. 05-1445**